



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Minutes of the September 21, 2007 Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. Mavourneen Thompson; Hon. David Shiah; Hon. Francis C. Marsano; Hon. Edward M. Youngblood. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:04 A.M., Chair Michael Friedman convened the meeting and welcomed the new Commission members, the Honorable Francis Marsano and the Honorable Edward Youngblood.

The Commission considered the following items:

**Agenda Item #1 Ratification of Minutes: August 13, 2007 Meeting**

Mr. Wayne noted that the staff received comments from Carl Lindemann offering advice to the Commission regarding the minutes for August 13 and some inaccuracies that he perceived in the minutes. Mr. Wayne explained for the benefit of new Commission members how the minutes are drafted and approved. Both he and Ms. Gardiner listened to the 16 minutes of audio recording of the previous meeting which contains the items that Mr. Lindemann disputes. Neither he nor Ms. Gardiner believe that the minutes are inaccurate as written. Mr. Wayne noted that the minutes are not intended to be a transcript of the meeting. The staff recommends that the minutes be adopted as written.

Mr. Friedman noted Ms. Gardiner, staff counsel, had listened to the recording of the last meeting, and she affirmed that she had done so and she concurs with the staff recommendation.

Carl Lindemann, representing Truedialog.org, stated that he could not find any record of any statement by staff regarding the substantive issue. He stated Mr. Wayne indicated to him that

there was no written statement about that issue and that it had taken place in a conversation, of which there is no record, among the Chair, Mr. Wayne, and Ms. Gardiner. He questioned how a motion could be made about an item when the staff had made no statement of it. He said that he found it odd that there was a motion to accept a view when the view did not appear to have been presented.

Mr. Friedman recalled he had made the motion regarding the jurisdictional issue of whether the Commission could hear the particular complaint that Mr. Lindemann had brought. Mr. Friedman said that he thought the minutes reflected that motion.

David Shiah moved that the Commission ratify the minutes of the August 13 meeting without change. The motion was seconded by Ms. Thompson and passed by a vote of 3-0. (Mr. Marsano and Mr. Youngblood were not present at the August 13<sup>th</sup> meeting and, therefore, did not vote on the motion.)

In order to accommodate the attendance of Rep. William Walcott's attorney, David Van Dyke, Esq., the discussion of Agenda Item #2 was delayed.

### **Agenda Item # 3 Recommended Referral of Benjamin Meiklejohn to Maine Attorney General for Collection of Late-Filing Penalty**

This matter was resolved before the meeting. Mr. Meiklejohn paid his penalty on September 20.

### **Agenda Item #4 Staff Proposals on Legislation**

Mr. Wayne explained the two proposed bills for submission to the Legislature by October 3, 2007. He said the first bill relates to campaign finance regulation, exceptions to public records law, and conflicts of interest issues. Mr. Wayne briefly summarized the proposed bill changes as drafted:

- ☐ 21-A MRSA § 1002 would authorize the Commission to hold meetings by telephone for discussion of procedure or logistics affecting upcoming monthly meetings.
- ☐ 21-A MRSA § 1003(1-A) would make auditing documents confidential, unless they become part of a final audit report.

- 21-A MRSA § 1005 would prohibit the commercial use of contributor information which is collected and stored in the Commission's database; would allow the use of this information for a variety of electoral and political purposes; and would prohibit the use of this information by non-electoral political organizations, charities, and other non-profits for non-political purposes, *e.g.*, fundraising.
- 21-A MRSA §§ 1011 and 1059 would allow municipal clerks to set their deadlines for candidate, parties, and PAC finance reports for municipal elections at the close of their business day.
- 21-A MRSA § 1125(3) would amend a law enacted in 2007 which allows voters to make their \$5 qualifying contributions over the Internet, to prohibit the Commission from releasing names and addresses of contributors in an electronic format to anyone but the candidate or someone designated by the candidate.
- 21-A MRSA § 1125(12) would require candidates using MCEA funds to pay family members to disclose their relationship on their campaign finance reports.
- 1 MRSA § 1012 relates to Commission member qualifications and conflict of interest issues with regard to serving as an officer of a political committee or as an officer of a 1056-B filer. The questions of concern are: 1) under what conditions should an individual's political activities prevent him or her from serving on the Commission altogether and 2) under what conditions should a member's political affiliations require them to recuse themselves from a particular matter. Mr. Wayne noted that currently, Commission members may be removed by the Governor or by impeachment under the Maine Constitution.

Mr. Wayne summarized the second bill's proposed changes regarding lobbyist disclosure. The Legislature has already directed the Commission to create a profile page for each lobbyist, lobbyist associate, and employer. The lobbyists' profile page would include a photograph of the lobbyist. Under the proposed bill, the Commission's website would also have a "face book" of lobbyists organized by each joint standing committee of the Legislature. The bill would require lobbyists to submit photos when registering as lobbyists. The proposed law would grant a waiver if a lobbyist did not want to submit a photo for security reasons.

Mr. Friedman asked the Commission's counsel if she had any substantive changes to the recommendations after reviewing the proposed amendments. Ms. Gardiner said she thought that the issues raised in the amendments were policy decisions for the Commission, that Mr. Wayne's drafting was sound, and that she only had a few minor language changes.

Mr. Friedman asked for clarification regarding the public record exception for qualifying contributor lists from the Internet. Mr. Wayne noted that if the list is conveniently stored electronically and is easily sent in an e-mail, the use of the list may go beyond how the voter intended their information be used, which is for political or election related purposes.

Ms. Thompson asked whether there was any other state agency with experience with this issue.

Mr. Wayne said that the language in the proposed bill is based on the section of the law that deals with the voter information that is stored on the Secretary of State's Central Voter Registration System. Ms. Gardiner said that information in the Central Voter Registration System is confidential but there are exceptions made for very specific purposes. She explained that with the ease of obtaining a complete voter list electronically, also comes the risk of for-profit companies obtaining lists for commercial use. The data is more valuable and useful for both profit and non-profit users because it is easy to obtain. The restrictions on the Commission's database for contributor information would be similar to those for the Central Voter Registration database.

Mr. Youngblood asked what the penalty would be for using the voter lists in a way that was prohibited by law. Ms. Gardiner was unsure about the penalties for using the lists inappropriately.

Ms. Thompson expressed concern regarding restrictions on transparency by limiting what information is given out regarding contributors. She thought that was in conflict with what MCEA is all about. She feels the electronic contributions should be known also.

Mr. Wayne stated that the \$5 contributors are basically trying to support candidates, not influence candidates. The hard copy of the form which lists the \$5 contributors would be available in the candidate's folder if anyone wanted to access that list.

Greg Lewis, member of the public, spoke regarding civil penalties of up to \$5,000 for using contributor lists for commercial purposes (21-A M.R.S.A. § 1005). He felt the civil penalty of up to \$5,000 is not enough for a big company that would be willing to pay that small amount for a large list of voters in Maine. It could be considered the cost of doing business. He suggests a penalty on a per instance basis.

Mr. Marsano stated that he believes the wording in the last sentence – “knowingly violates... is guilty of a Class E crime” – would deter someone from attempting to use these lists in a manner which is prohibited.

Carl Lindemann expressed his concern that the Commission was not following the proper procedure for submitting legislation to the Legislature. He said that, as far as he could determine, the Commission staff had not solicited suggestions prior to presenting the proposed legislation to the Commission. He said that he was perplexed as to how the Commission could consider proposed legislation dealing with the disqualification of a Commission member since, on the one hand, the Commission can only propose legislation regarding matters over which it has jurisdiction (21-A M.R.S.A. § 1009) and, on the other hand, the Chair, the Executive Director, and Commission counsel have all indicated that they do not believe that the Commission has the jurisdiction to decide on the qualifications of a member to serve on the Commission.

Ms. Thompson summarized Mr. Lindemann's concerns as she understood them: the proposals for legislation were not discussed by the people affected, but were researched by staff only; the LVA Committee expects discussion has already happened among Commission members and that our decision regarding legislative proposals has been discussed and reviewed prior to being submitted; we as a Commission had a member whose qualifications for serving on the Commission were questioned by Mr. Lindemann and whether we have jurisdiction to examine that member; and finally, Mr. Lindemann feels the staff is bringing issues before the

Commission members regarding jurisdictional legislative proposals based on the staff's own ideas. Ms. Thompson felt strongly that the Commission needs to decide whether it has the right to question qualifications of a sitting member of the Commission and get it off the table once and for all.

Mr. Freidman stated this issue was settled last month and has been taken off the table.

Mr. Marsano stated he believes this statute does exactly what Mr. Lindemann suggests, which is to present the Commission's position to the Legislature that there is no right to the type of jurisdiction that Mr. Lindemann is seeking (for the Commission to question member's qualifications). Mr. Marsano said this proposed legislation would answer the jurisdiction question. He noted that the only remedy would be referral to the Governor or Legislature for removal or impeachment. The Commission then is required to look at the recusal concept, which is how judges in the state courts operate on conflict of interest issues. Mr. Marsano said that the jurisdiction issue is resolved through this legislation if the Legislature approves it; however, Mr. Lindemann is free to argue to the Legislature that there should be an internal process at the Commission level.

Mr. Lindemann said he was not aware of the two part process for judges. He went on to say events of the last year have raised important questions as to what needs to happen when there are failures to disclose information and conflicts of interest by nominees to the Commission and sitting Commission members. He believes there is a different standard for Commissioners, in comparison to Legislators. He reiterated the importance of disclosure by Commissioners. The goal, he said, is to create greater public confidence in the Ethics Commission by holding it to the same standards as Legislators. He asked how the process worked, whether the Ethics Commission simply puts forth legislation and the LVA Committee decides whether it is within the Commission's jurisdiction.

Mr. Marsano said if the bill were adopted, the question of recusal falls to the individual on the Commission. If an individual questioned a Commissioner's decision, it can be tested by certain processes. The Commissioner would be held accountable for his or her decision to recuse or not.

Mr. Marsano explained that if the Legislature agrees with proposed legislation provided by the Commission, then the issues are resolved.

Mr. Lindemann said that he thought the Commission was being inconsistent when it maintains that it does not have jurisdiction over an issue in Agenda Item #1 and that it does have jurisdiction over the issue in Agenda Item #4. He said that this goes to the issue of public confidence in the Ethics Commission. He believes it is important for the Commission to be consistent. He also believes that the Commission's interpretations of the issue were made and shifted as it serves to insulate the former Commission Chair.

Mr. Marsano stated that with regard to the jurisdiction issue, the proposed legislation leaves any decision with regard to recusal in the hands of the individual Commission member and is, therefore, consistent with the Commission lacking jurisdiction to determine what actions one of its members may take.

Mr. Friedman stated for clarification that the jurisdictional issue that was decided last month was whether the Commission had the authority to sit in judgment of another Commissioner. He said that was the limited jurisdictional issue addressed at the last meeting. He further stated that the proposed bill is not a jurisdictional issue, he sees it as clarification. Mr. Friedman said there is an underlying authority of any State board to go to the Legislature and get clarification on issues that help that board run in smoother fashion. He said he does not believe that the proposed language in 21-A M.R.S.A. § 1012(2-A) is a jurisdictional issue for the Commission to present to the Legislature. Mr. Friedman stated that the jurisdiction issue was decided last month.

Mr. Lindemann said it appears to be up to LVA Committee to make any final determination regarding the Commission's jurisdiction.

Mr. Friedman confirmed the Legislature does give the Commission authority to act.

Mr. Lindemann requested a formal vote on the jurisdictional issue and asked for clarification.

Mr. Lindemann said a specific view was taken by Commissioners on jurisdiction in the past and the Commission needs to be consistent in these views.

Ms. Gardiner stated there are two different issues here. Mr. Lindemann is challenging whether Commission has jurisdiction to consider legislative proposals relating to qualifications of its members, if indeed, under current law, the Commission does not have jurisdiction to disqualify its own members. She said the language in 21-A M.R.S.A. § 1009 is permissive and invites the Commission to make recommendations to the Legislature on matters that the Commission adjudicates within its jurisdiction, *e.g.*, complaints and reports, but does not muzzle the Commission, as a legal matter, from bringing forth other proposals to the Legislature. There is no procedural requirement that a vote be taken on that particular jurisdictional issue as Mr. Lindemann is suggesting.

Mr. Lindemann again brought up the issues of solicitation for comments regarding proposed legislation, the role of the Commission in proposing legislation, whether the Commission can *sua sponte* bring forward proposed legislation to the Legislature, and whether due process has been observed. He said that if due process has not been observed and, therefore, the proposed legislation should not go to the LVA Committee, he did not see any point for him to comment on the proposed legislation.

Ms. Gardiner stated that due process is not involved in submitting proposals to the Legislature. It is not a final action that the Commission has taken. The proposed legislation will get a hearing at the Legislature which is free to amend it, reject it, or completely substitute a new version. Section 1009 of Title 21-A, to which Mr. Lindemann refers, encourages the Commission to solicit suggestions but does not require a public hearing process before the Commission submits legislative proposals.

Mr. Lindemann expressed his concern about the proposed language change from “political committee” to “party committee, political action committee, or authorized candidate committee” in 1 M.R.S.A. § 1012(2). He said that he did not know what the impact or the intent of this change is. He stated he believes any person who is part of an organization that the Ethics Commission regulates should be excluded from being a member of the Commission. If a 1056-B filer is later determined to be a PAC while the officer is on the Commission, this would pose a problem.



Mr. Wayne addressed the issue of Commission member qualifications. The staff recommendation is that only those people who are officers or directors of party committees or PACs or candidate committees be disqualified, since it is difficult to find people to serve on the Commission. He advised that barring people beyond that would place too great a limit on the pool of possible Commission members. Mr. Wayne further reviewed the two options in the proposed legislation regarding a nominee to the Commission or a sitting Commission member who was an officer, director, employee, or decision-maker of a 1056-B organization. One option would exclude those individuals from being on the Commission; the other option would allow them to serve but recuse themselves from participation in a matter before the Commission which involved the organization with which they were affiliated.

Mr. Marsano moved to strike the bracketed language from the proposed legislation in 1 M.R.S.A. § 1012(2). Mr. Youngblood seconded the motion. The motion passed 5-0.

Mr. Marsano moved that the proposed legislation presented by the staff be approved and forwarded to the Legislature. Mr. Youngblood seconded the motion. The motion passed 5-0.

**Agenda Item #2 Recommended Referral of Rep. William R. Walcott to Maine Attorney General for Misuse of Public Funds**

Mr. Wayne explained that Rep. Walcott was late in returning the unspent authorized portion of his 2006 MCEA funds (\$1,940.56) even after several attempts by staff requesting Rep. Walcott return the money. This prompted an audit of his campaign. In August, a meeting was held with Rep. Walcott and his attorney, David Van Dyke, at which Rep. Walcott admitted to falsifying expenditures on his reports, totaling \$2,933.44. Shortly after the meeting, he returned that amount to the Fund. Although he returned the funds after this meeting, the staff believes a stern response needs to be taken because spending public funds for personal purposes and falsifying campaign finance reports are serious violations. Mr. Wayne further stated that Rep. Walcott has had many accomplishments while serving in the Legislature and the Commission does not want to diminish his accomplishments. Nevertheless, the staff believes that a person in public trust who takes advantage of the process should receive a serious response from the State. The staff recommends referral to the Attorney General's Office for criminal prosecution. Mr. Wayne said that this would likely mean postponing consideration of imposing any civil penalties by the

Commission until the Attorney General's office has investigated. Mr. Wayne stressed the rarity of this type of violation (less than 1%) with regard to publicly funded candidates. Out of 621 candidates, only 6 have intentionally used public funds for personal purposes.

Mr. Friedman asked if there would be a statute of limitation issue, if the civil penalty were put on hold until after the Attorney General's investigation.

Mr. Wayne stated that there would not be any time restriction.

Mr. Marsano said there may be a question whether Rep. Walcott should answer questions today, due to the fact that he may say something to incriminate himself before the Attorney General's investigation. In order to prevent statements that would be admissible against him later on, Mr. Marsano stated he would be willing to make a motion.

Mr. Van Dyke stated that he would not allow his client to speak today. He said at the meeting with Mr. Wayne a few weeks ago, Rep. Walcott gave a statement admitting to what he is charged with. Since there will possibly be a referral to the Attorney General, Mr. Van Dyke has advised Rep. Walcott not to speak today.

Mr. Marsano made a motion to accept the staff's recommendation and refer the matter to the Attorney General. Mr. Shiah seconded the motion.

Ms. Thompson noted that this was not the procedure that has been practiced in the past, which was that a party would be able to address the Commission prior to a motion being made or voted upon. She asked if this motion was made basically to protect Rep. Walcott in light of a possible criminal investigation.

Mr. Marsano clarified that if the motion is approved, Mr. Van Dyke could make a statement on behalf of his client and that statement would not be admissible against Rep. Walcott. The motion passed 5-0.

Mr. Van Dyke stated that Mr. Walcott came to him and indicated the wrongdoing had occurred. Mr. Walcott had been very burdened by the matter. Mr. Walcott told him he would have come forward even without the audit, and he was relieved when he received the audit letter. Mr. Van Dyke said he and his client were ready to meet with the investigator from the Attorney General's Office and answer any questions.

**Agenda Item #5 Procedures for Commission Meetings/Hearings**

Mr. Friedman stated that he would like to have more time to go over the information presented by the staff, especially with new members on the Commission. Due to the importance of the matter, he would like to table the matter and look more closely at the materials.

Mr. Marsano moved to table this item until next month. The motion was seconded by Mr. Youngblood. The motion passed 5-0.

**Agenda Item #6 Presentation of Audit Reports for Rep. Jonathan B. McKane, Randall Greenwood, and Clayton Haskell**

Mr. Dinan reviewed the findings and reported that the only exception was a minor technical violation with regard to Rep. McKane's audit with no penalty assessed. The remaining audits found no exceptions.

Mr. Shiah moved to accept the audits as presented, including a technical violation against Rep. McKane with no penalty. Ms. Thompson seconded the motion. The motion passed 5-0.

**Agenda Item #7 MCEA Violation of Overspending by \$253/Anne P. Graham**

Mr. Wayne explained that Ms. Graham was a first-time candidate and she has been very responsive to staff requests for information. He also noted that bookkeeping issues can be a problem for new candidates on occasion. Due to an expenditure not being accounted for, her campaign spent more than it was authorized. Mr. Wayne said the staff recommends a penalty of \$125 for overspending, which is approximately half of the amount she went over. Mr. Wayne stressed the importance for the need for candidates to understand this requirement and comply with it. Mr. Wayne noted her over-spending was a little more than other candidates had committed.

Mr. Youngblood asked what the policy allows for penalties and how this amount was devised.

Mr. Wayne stated that the \$125 is approximately half of the overage but also took into consideration her good intentions and that she is already out of pocket \$253.

Mr. Youngblood said this seems to be a record keeping error. He also confirmed that because Ms. Graham came forward and amended her original finance report, the overage was discovered.

Mr. Youngblood cautioned against assessing a penalty that was so high as to prevent candidates from coming forward to admit their error. Mr. Wayne said most candidates do not want or intend to overspend or take advantage of the process.

Anne Graham said that she was new to campaigning and explained that not having any political experience and being a first-time candidate put her at a definite disadvantage. She stated that she was on the phone or e-mailing the Commission constantly for help from her candidate registrar. She explained that she used her debit card for making payments, instead of writing checks. Her expenditure for the newspaper ad was made in mid-October and the bank did not deduct the amount until December, so she thought she had more money than she actually did. She asked her husband to buy stamps at the end of the campaign period and repaid him after the election. This reimbursement to her husband put her over the allotted amount. Ms. Graham stated she would not have run if the clean election funds were not available to her. She said she does plan to run again and fully supports the process and respects the public's money.

Mr. Shiah asked whether she would have known her balance if the newspaper had debited the charge in a timely fashion. Ms. Graham confirmed this was the problem.

Mr. Friedman stated that Ms. Graham did not purposefully overspend her public money and there was no intention of fraud. Since she came forward and did everything correctly, he does not feel comfortable assessing a penalty in this case. He would support the violation, but not a penalty.

Mr. Youngblood agreed. He said public confidence is affected every time a violation occurs. He also stated he believes Ms. Graham has certainly gone through \$125 of mental anguish over this matter.

Ms. Thompson expressed her concern over the message the Commission sends to publicly funded candidates. In order to be consistent and send the right message, whether they are small or large mistakes, she believes a penalty should be assessed.

Mr. Marsano suggested a middle-ground resolution, recognizing the violation and setting an example for other candidates. He thought perhaps a \$50 penalty (which is 4% of the overage) would recognize the violation, but also confirm that this was an honest error. Mr. Marsano made a motion to find Ms. Graham in violation of 21-A M.R.S.A. § 1125(6) and reduce the penalty assessed to \$50. Mr. Shiah seconded the motion which passed by a vote of 4-1 with Mr. Friedman opposed.

#### **Agenda Item #8 Selection of Meeting Dates**

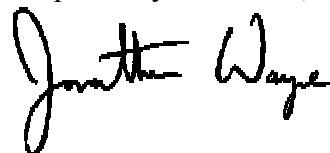
Discussion took place regarding establishing a regular fixed day for monthly meetings. Mr. Wayne explained that in the past, the second Wednesday of the month was the established Commission meeting day. After a brief discussion, it was decided that setting the date each month would be preferable. Mr. Shiah moved to set the monthly meeting date on a month-by-month basis in consideration of the various time commitments of the Commissioners. Ms. Thompson seconded the motion. The motion passed 4-1, with Mr. Marsano opposing. The next meeting date will be October 30, 2007.

#### **OTHER BUSINESS**

Gregg Lewis addressed the Commission regarding what he felt was inappropriate behavior by a candidate during the 2004 election. After a brief discussion, he was advised to bring the matter forward to the Executive Director.

Meeting adjourned at 11:13 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is fluid and cursive, with the first name "Jonathan" written in a larger, more prominent script than the last name "Wayne".

Jonathan Wayne, Executive Director